

IN THE INTERNATIONAL COURT OF JUSTICE



THE PEACE PALACE

THE HAGUE, THE NETHERLANDS

QUESTIONS RELATING TO

PRIOR INFORMED CONSENT AND BENEFIT SHARING IN THE CONTEXT OF DE-EXTINCTION

2025 General List No. 303

ANECOYON

(APPLICANT)

v.

RIDUS

(RESPONDENT)

-MEMORIAL FOR THE RESPONDENT-

30TH STETSON INTERNATIONAL ENVIRONMENTAL MOOT COURT COMPETITION 2025

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TABLE OF ABBREVIATIONS

S.NO	ABBREVIATIONS	ROOT WORD
1.	&	And
2.	¶	Paragraph
3.	¶¶	Paragraphs
4.	§	Section
5.	§§	Sections
6.	AHTEG	Ad Hoc Technical Expert Group
7.	Art.	Article
8.	ARISWA	ILC Draft Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries
9.	CBD	Convention on Biological Diversity
10.	CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
11.	CIL	Customary International Law
12.	Clarifications	Clarifications to the 30 th Stetson International Moot Court Competition Record
13.	COP	Conference of the Parties
14.	CONF.	Conference
15.	CRISPR	Clustered regularly interspaced short palindromic repeats
16.	DNA	Deoxyribonucleic Acid
17.	Doc.	Documents
18.	DSI	Digital Sequence Information
19.	ECHR	European Court of Human Rights
20.	Ed.	Edition
21.	EIA	Environmental Impact Assessment
22.	Et. Al.	Et. Alia (and others)
23.	FAO	Food and Agriculture Organisation
24.	G.A. Res.	General Assembly Resolution
25.	GMO	Genetically Modified Organism

26.	I.C.J.	International Court of Justice
27.	Id	Idem (the same)
28.	i.e.	That is
29.	ILC	International Law Commission
30.	ITLOS	International Tribunal for Law of Sea
31.	IUCN	International Union for Conservation of Nature
32.	J.	Journal
33.	No.	Number
34.	PIC	Prior Informed Consent
35.	Pmbl.	Preamble
36.	Record	30 th Stetson International Moot Court Competition Record
37.	UN	United Nations
38.	UNEP	United Nations Environment Programme
39.	UNFCC	United Nations Framework Convention on Climate Change
40.	UNGA	United Nation General Assembly
41.	v.	Versus
42.	VCLT	Vienna Convention on Law of Treaties
43.	WTO	World Trade Organisation

QUESTIONS PRESENTED

1. WHETHER RIDUS'S CONDUCT COMPLIED WITH OR VIOLATED THE PRIOR INFORMED CONSENT PROVISIONS OF THE CBD AND THE NAGOYA PROTOCOL, TO THE EXTENT THEY ARE APPLICABLE?
2. WHETHER ANECOYON'S REFUSAL TO CONSENT BASED ON ITS OBJECTIONS TO DE-EXTINCTION IS COUNTER TO THE CBD'S OBJECTIVES?
3. WHETHER, AS AN INITIAL MATTER, DSI USED FOR DE-EXTINCTION ACTIVITIES IS "BIOTECHNOLOGY" FOR PURPOSES OF THE CBD AND THE NAGOYA PROTOCOL?
4. WHETHER THE SIDNEY ANIMAL PARK IS A USER OF DSI ON GENETIC RESOURCES FOR PURPOSES OF CBD DECISION 16/2 AND WHETHER THE SIDNEY ANIMAL PARK IS ENGAGED IN COMMERCIAL ACTIVITY COVERED BY A SECTOR CURRENTLY LISTED IN CBD DECISION 16/2?

STATEMENT OF JURISDICTION

1. Pursuant to the Joint Notification and the Record concluded on 14 July 2025 between Anecoyon and Ridus, and in accordance with Article 40, paragraph 1 of the Statute of the International Court of Justice, the Parties hereby submit to this Court their dispute regarding the questions relating to Prior Informed Consent and Benefit Sharing in the context of De Extinction.
2. In accordance with Article 2 of the Special Agreement, notified to the Court on 14th July, 2025, the International Court of Justice is hereby requested to adjudge the dispute in accordance with the rules and principles of general international law, including any applicable treaties.
3. The parties have agreed to respect the decision of this Court by accepting it to be final and binding, and that they will execute the same in good faith.

STATEMENT OF FACTS

1. Anecoyon and Ridus, lower-middle-income and high-income neighbouring States, once formed single territory (R¶¶3,4). The Panthera People, an indigenous community that once resided in unified territory, now reside in Ridus (R¶¶1,5).
2. Royal Panther (Panther) was a transboundary animal between these states and became extinct, and its best-preserved specimen, found in Anecoyon, was loaned to Ridus in 2009 for “educational and scientific research” (R¶¶6,15). In 2022, Ridus announced that it had extracted DNA from fossil and would use Digital Sequence Information (DSI) for De-Extinction as part of its rewilding project (R¶16).
3. Diplomatic notes exchanged between both nations, Anecoyon citing its concerns, including failure to obtain Prior informed consent (PIC), applicability of Nagoya Protocol and purpose of loan agreement excluding de-extinction whereas Ridus citing non-applicability of Nagoya Protocol, non-requirement to obtain PIC, claim over DNA and the ambit of loan agreement encompassing PIC (R¶¶18-23).
4. After failed negotiation, Anecoyon enacted national legislation prohibiting use of genetic resources for de-extinction (R¶24). Ridus made DSI public, obtained Panthera community’s consent for de-extinction (R¶28). Two panthers were produced and are raised in Sidney Animal Park (Park) which is charging visitors to observe panthers, using that money for Panther’s care and captive breeding of transboundary animals (R¶¶29,32,33,35).
5. Anecoyon demanded share in Cali Fund, citing, the project is biotechnology and Park’s activity is commercial activity, while Ridus denied the same (R¶¶38-39).
6. Upon failed negotiations, matter is referred to this Court through a Compromise (R¶¶44,46,47).

SUMMARY OF ARGUMENTS

I.

Ridus complied with PIC provision of CBD and Nagoya Protocol as Protocol cannot be applied retroactively, and Ridus has sovereign right over its natural resources. PIC was not required, as Anecoyon is not “country providing genetic resource”, and even if required, it was obtained through loan agreement.

II.

Anecoyon’s refusal, based on objection to de-extinction, breaches CBD’s objectives, as de-extinction is environmentally sound use. Ridus upholds precautionary principle, proportionality principle, duty to cooperate and good neighbourliness principle. Moreover, Ridus duly conducted EIA, before commencement of project.

III.

DSI used for de-extinction is not “biotechnology” under CBD and Nagoya Protocol, as ordinary meaning of term excludes DSI, and treaty interpretation cannot extend its scope without state’s consent. COP practice related to DSI remains unsettled under CBD and Nagoya Protocol.

IV.

Park is not a “user” of DSI, as creator of DSI cannot be deemed a user, and Park does not meet threshold of “user” status. Its activities fall under zoological and nature reserve activities, not within sectors benefiting from DSI use and it engages in no commercial activities listed in Decision 16/2; therefore, its operation cannot be characterised as commercial.

I. RIDUS'S USE OF FOSSIL TO GENERATE DSI AND USE OF DSI FOR DE-EXTINCTION COMPLIES WITH THE PRIOR INFORMED REQUIREMENTS UNDER THE CBD AND THE NAGOYA PROTOCOL

1. Pursuant to CBD,¹ contracting parties are mandated to enable access to genetic resources for environmentally sound use and not to restrict access that runs counter to its objective.² CBD confers right to request PIC³ and responsibility to conserve biological diversity for the whole of humankind.⁴
2. Ridus's de-extinction of Panther from genetic resource, i.e., fossil of Panther, is conservation of biological Diversity through rewilding.⁵ Accordingly, there was a mandate on Anecoyon not to restrict such access. By using fossil to generate DSI and using DSI for de-extinction,⁶ Ridus complied with CBD.

[I.A] NAGOYA PROTOCOL CANNOT BE APPLIED RETROACTIVELY

3. Pursuant to VCLT, "Unless a different intention appears from treaty" refers to situations where provision regarding retroactivity is expressly provided and the expression "otherwise established" refers to "nature of the treaty".⁷ For law to apply retroactively, it must be specifically mentioned in statute itself.⁸ Nagoya Protocol, established to implement access

¹ Convention on Biological Diversity art. 15(5), June 5, 1992, 1760 U.N.T.S 79 [hereinafter CBD].

² *Id.* art. 15(2).

³ *Id.* art. 15(5).

⁴ *Id.* pmb. ¶ 3.

⁵ Record, ¶ 16.

⁶ *Id.*

⁷ Vienna Convention on the Law of Treaties art. 28(2), May 23, 1969, 1155 U.N.T.S 331 [hereinafter VCLT]; OLIVER DÖRR & KIRSTEN SCHMALENBACH, VIENNA CONVENTION ON THE LAW OF TREATIES: A COMMENTARY 510-511 (2d ed. 2018) [hereinafter DÖRR].

⁸ *Ambatielos Case (Greece v. U.K.)*, 1952 I.C.J. 28 (July 1).

and benefit-sharing regime,⁹ and strengthening substantive obligation of Convention,¹⁰ cannot be applied retroactively as Art 28(2) of CBD provides “*Protocol shall be adopted at a meeting of Conference of Parties*”,¹¹ lacked any rebuttal or special clause necessitating retroactivity.¹²

4. The *travaux préparatoires* confirm this position,¹³ where several states confirmed its non-retroactivity,¹⁴ and all four proposed retroactivity provisions were abandoned,¹⁵ demonstrating a clear intent of draftsmen not to incorporate any retroactive provision. VCLT is therefore applying statutory intent of treaty in good faith, and not adding terms to treaty.¹⁶ Therefore, it is established that Nagoya Protocol cannot be applied retroactively.

[I.B] RIDUS HAS THE SOVEREIGN RIGHT TO USE ITS OWN NATURAL RESOURCES

5. The obligation to obtain PIC,¹⁷ arises from principle that states have sovereign right over their natural resources.¹⁸ However, where resources are shared, parties are mandated to

⁹ Nagoya Protocol on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity pmb. ¶ 2, Oct. 29, 2010, 3008 U.N.T.S. 1 [hereinafter Nagoya Protocol].

¹⁰ Evanson Chege Kamau et al., *The Nagoya Protocol on Access to Genetic Resources and Benefit Sharing: What Is New and What Are Implications for Provider and User Countries and the Scientific Community?*, 6 L., ENV'T & DEV. J. 246, 256 (2010).

¹¹ CBD, *supra* note 1, art. 28(2).

¹² Question Relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), 2012 I.C.J. 422, ¶ 100 (July 20).

¹³ VCLT, *supra* note 7, art. 32.

¹⁴ *ABS 9 Highlights: Earth Negotiation Bull.* (Int'l Inst. for Sustainable Dev., Winnipeg, Can.), Mar. 27, 2010, at 1; ELISA MORGERA ET AL., *UNRAVELLING THE NAGOYA PROTOCOL: A COMMENTARY ON THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING TO THE CONVENTION ON BIOLOGICAL DIVERSITY* 78-79 (Brill 2014) [hereinafter Morgera].

¹⁵ Kamau et al., *supra* note 10, at 254-255.

¹⁶ VCLT, *supra* note 7, art. 31.

¹⁷ CBD, *supra* note 1, art. 15(5).

¹⁸ *Id.*; U.N. Conference on the Human Environment, *Stockholm Declaration* Principle 21, U.N. Doc. A/CONF.48/14/Rev.1, at 3 (June 16, 1972); *North Sea Continental Shelf* (Ger. v. Den.; Germ. v. Neth.), Judgment, 1969 I.C.J. 3, ¶ 19 (Feb. 20) [hereinafter *North Sea*].

cooperate pursuant to Nagoya Protocol,¹⁹ and it creates right of all states over resource.²⁰ The species existed within Ridus's territory as well.²¹ Therefore, Anecoyon cannot claim exclusive ownership.²² Ridus equally holds the rights, responsibilities and benefits flowing out of species i.e., natural resource.

6. The protocol does not require parties to reach an agreement rather require parties to put good faith efforts and in failure to reach an agreement, parties can take unilateral actions while taking other state and indigenous people into consideration,²³ aiming towards protection and preservation of specific environmental resource.²⁴
7. As Anecoyon, did not cooperated and parties were unable to reach an agreement, Ridus, validly obtain consent of Panthera people. Thus, Ridus, fulfilled PIC requirement by taking PIC from indigenous people.

[I.C] RIDUS IS NOT REQUIRED TO OBTAIN PIC AS ANECOYON IS NOT THE “COUNTRY PROVIDING GENETIC RESOURCE”

8. Pursuant to CBD, a state is required to obtain PIC from “country providing genetic resource”,²⁵ i.e., the country supplying genetic resources collected from *in-situ* sources.²⁶ *In-situ* condition refers to condition where genetic resource “exists” in ecosystem and natural habitat,²⁷ means only those resource that now exists in living conditions.²⁸

¹⁹ Nagoya Protocol, *supra* note 9, art. 11.

²⁰ Chris Wold, the status of sea turtles under International Environment Law and International Environment Agreements, 5 J. INT'L WILDLIFE & POL'Y. 11, 11-48 (2002).

²¹ Record, ¶¶ 6, 21.

²² *Id.* ¶ 22.

²³ Morgera, *supra* note 14, at 210-211; Appellate Body Report, *United States- Import Prohibition of Certain Shrimp and Shrimp Products*, ¶ 73, WTO. Doc. WT/DS58/AAB/R, (adopted Nov. 21, 2001) [hereinafter Shrimp].

²⁴ *Id.*

²⁵ CBD, *supra* note 1.

²⁶ *Id.* art. 2 ¶ 5.

²⁷ *Id.* art. 2 ¶ 12.

²⁸ LYLE GLOWKA ET AL., A GUIDE TO THE CONVENTION ON BIOLOGICAL DIVERSITY 18 (IUCN Environmental Policy & L. Paper No. 30, 1994).

Accordingly, definition of “country providing genetic resource” means genetic resource collected from living species and not extinct ones. Ridus obtained fossil from Anecoyon.²⁹ Such resource cannot be considered as resource collected from *in-situ* sources. Therefore, Ridus is not obligated to obtain PIC from Anecoyon.

[I.D] EVEN IF PIC IS REQUIRED, THE SAME WAS OBTAINED UNDER LOAN AGREEMENT

9. Loan agreement, signed in 2009 for “education and scientific research” purposes,³⁰ constitutes a valid PIC,³¹ as Genomic Mapping, a process of determining location of genes on chromosomes,³² is scientific research.³³
10. De-Extinction project (Project) can validly be construed as falling under ambit of “education and scientific research” as t
11. he expression “scientific research” is broad enough to encompass various activities.³⁴ As there is no difference between purpose of loan agreement and actual purpose for which Ridus used genetic resource, loan agreement can be validly construed as valid PIC.
12. Scientific research is “*systematic approach to the generation of new knowledge, building on previous work yet subjecting it to close scrutiny to determine any failings. Irrespective of the type of research activity (theoretical, experimental, observational), the result has to be substantiated, and the work must be reproducible.*”³⁵ Research activities, classified in

²⁹ Record, ¶ 15.

³⁰ *Id.* ¶15.

³¹ *Id.* ¶ 21.

³² National Human Genome Research Inst., (last visited Oct. 2, 2025), Gene Mapping.

³³ ALAIN RIVAL & PATRICE LEVANG, PALMS OF CONTROVERSIES: OIL PALMS AND DEVELOPMENT CHALLENGES 52 (CIFOR 2014).

³⁴ BRIAN KENNETT, THE NATURE OF RESEARCH AND INNOVATION, IN PLANNING AND MANAGING SCIENTIFIC RESEARCH: A GUIDE FOR THE BEGINNING RESEARCHER 1,2,5 (ANU Press 2014).

³⁵ *Id.* at 2.

basic, strategic and applied research,³⁶ include, generation of new knowledge and exploitation of existing knowledge for formation of new products or processes.³⁷

13. De-Extinction process, comes within ambit of scientific research as, utilisation of DSI for de-extinction, by genetically engineering North American Cougar's cells to resemble Panther traits with CRISPR technology and implanting resulting placenta in host Cougar, to arise at Genetically Modified Organisms (GMOs) of Panthers,³⁸ is generation of new knowledge and exploitation of existing knowledge for generating product or process. By doing so, Ridus acted under the ambit of loan agreement, i.e., scientific research.

II. ANECOYON'S REFUSAL TO GIVE CONSENT FOR THE USE OF FOSSIL, BASED ON ITS OBJECTIONS TO DE-EXTINCTION, IS CONTRARY TO CBD'S OBJECTIVE

14. CBD mandates parties to enable access to genetic resources for environmentally sound use and not to impose restrictions that run counter to CBD's objective.³⁹ This Court shall consider objectives of CBD while interpreting its provisions, which are to provide maintenance, recovery, and protection of viable population of species, and to promote research consistent with this objective.⁴⁰

15. Pursuant to VCLT,⁴¹ treaty shall be interpreted in good faith, giving ordinary meaning to terms of treaty, in their context and in light of its object and purpose. Thus, species reference in CBD encompasses extinct species, as primary purpose of CBD, i.e., conservation of biological diversity and sustainable development,⁴² involves reduction in extinction,⁴³ and

³⁶ *Id.* at 5.

³⁷ *Id.*; ORGANISATION FOR ECONOMIC COOPERATION AND DEVELOPMENT, FRASCATI MANUAL 2015: GUIDELINES FOR COLLECTING AND REPORTING DATA ON RESEARCH AND EXPERIMENTAL DEVELOPMENT 45 (OECD Publishing 2015).

³⁸ Record, ¶¶ 31-32.

³⁹ CBD, *supra* note 1, art. 15(2).

⁴⁰ *Id.* art. 8(d), 8(f), 8(k), 9(c), 12(b).

⁴¹ VCLT, *supra* note 7, art. 31.

⁴² CBD, *supra* note 1, pmbl. ¶ 5, art. 1.

⁴³ *Id.* intro. ¶ 1.

de-extinction.⁴⁴ Therefore, Anecoyon’s national legislation prohibiting use of genetic resources for de-extinction,⁴⁵ is contrary to CBD’s objective, as project, aiming towards rewilding,⁴⁶ is consistent with CBD’s objective.

[II.A] DE-EXTINCTION IS AN ENVIRONMENTALLY SOUND USE

16. The Earth is facing an accelerating rate of biodiversity loss and requires an innovative conservation solution.⁴⁷ At this stage, de-extinction is promising to provide key solution by restoring lost ecosystems and fostering current conservation efforts.⁴⁸ De-Extinction can help in biodiversity and ecosystem restoration, as species lost due to human activities can be brought back,⁴⁹ and with species, whole ecosystem can also be restored, as it is well said, “*De-extinction is not just about bringing back a single species; it is about restoring the entire ecosystems*”.⁵⁰

17. The knowledge and technologies gained owing to de-extinction have potential to even conserve existing species,⁵¹ particularly by enhancing genetic diversity, strengthening pathogen resistance, and improving adaptability of threatened species.⁵² It can be

⁴⁴ Multidisciplinary Ad Hoc Technical Expert Group on *Synthetic Biology to Support the Process for Broad & Regular Horizon Scanning, Monitoring & Assessment, Prioritised List of Trends & Issues in Synthetic Biology*, at 37 U.N. Doc. CBD/SYNBIO/AHTEG/2024/1/INF/1 (Jan. 17, 2024).

⁴⁵ Record, ¶ 24.

⁴⁶ *Id.* ¶ 16.

⁴⁷ Robyn E. Shaw et al., Global Meta-Analysis Shows Action is Needed to Halt Genetic Diversity Loss, 638 NATURE 704, 706 (2025); Stephen D. Turner et al., De-extinction Technology and its Application to Conservation, 116 J. HEREDITY 3 (2025).

⁴⁸ *Id.*

⁴⁹ Ronald Sandler, The Ethics of Reviving Long-Extinct Species, 28 CONSERVATION BIOLOGY 354, 355-57 (2014); Erin Okuno, Frankenstein's Mammoth: Anticipating the Global Legal Framework for De-Extinction, 43 ECOLOGY L.Q. 581, 589-590 (2016).

⁵⁰ Colossal, *Is De-Extinction a Good Idea?*, (last visited Oct. 1, 2025), <https://colossal.com/is-de-extinction-a-good-idea/>.

⁵¹ *Id.*; Sandler, *supra* note 49, at 355-57.

⁵² Kangquan Yin et al., Plant Conservation in the age of Genome Editing: Opportunities and challenges, 25 GENOME BIOL. 279, 11-12 (2024); Turner, *supra* note 47, at 9.

particularly helpful in protecting currently endangered species,⁵³ and newly extinct species.⁵⁴ The reasons behind de-extinction involve restorative justice, i.e., humans are obliged to restore what has been destroyed by them.⁵⁵ Restorative justice can enhance conservation efforts, as it galvanises people towards ecological conservation by providing an illustration that humans can shape and repair past and current anthropogenic damage to ecology,⁵⁶ reducing inter-generational equity, an inherent concept of sustainable development.⁵⁷

18. De-extinction process provides an opportunity to study long-term effects of complex gene editing, epigenetic stability, and physiological adaptation within controlled environment. Moreover, data collected provides condition of health, growth, immune and behavioural patterns of species in managed setting, which can help in future conservation strategies while safeguarding animal welfare.⁵⁸ Therefore, de-extinction is an environmentally sound use and it upholds CBD's objectives.

⁵³ *Id.* at 12; Alejandro E. Camacho, Going the way of the Dodo: De-Extinction, Dualism, and Reframing Conservation, 92 WASH. U.L. REV. 857 (2015).

⁵⁴ *Id.* at 856-857.

⁵⁵ Colossal, *supra* note 50; Philip J. Seddon et al., Reintroducing Resurrected Species: Selecting De-extinction Candidates, 29 TRENDS ECOL. EVOL. 140 (2014).

⁵⁶ Camacho, *supra* note 53, at 858; IUCN Species Survival Comm'n, Guiding Principles on Creating Proxies of Extinct Species for Conservation Benefit 7 (2016).

⁵⁷ U.N. Conference on Environment and Development, *Rio Declaration on Environment and Development* Principle 3, U.N. Doc. A/CONF.151/26 Rev.1 (Vol. 1), annex 1, (Aug. 12, 1992) [hereinafter Rio Declaration].

⁵⁸ Turner *supra* note 47, at 9.

[III.A.i] Ridus' project upholds precautionary and proportionality principle

19. The precautionary principle,⁵⁹ a Customary International Law (CIL),⁶⁰ and an *erga omnes* obligation,⁶¹ requiring *due diligence*.⁶² Envisaged in CBD,⁶³ it mandates precaution against serious and irreversible harm.⁶⁴ The degree of *due diligence* required needs to be examined with test of proportionality,⁶⁵ which provides that, state's action should not cause excessive harm to another state or ecology.⁶⁶ Any cost-effective measure that can prevent such harm shall not be postponed owing to lack of scientific certainty.⁶⁷ The purpose of the principle is to “*anticipate, prevent and attack the causes of environmental degradation.*”⁶⁸
20. Ridus obtained fossil under loan agreement long back in 2009,⁶⁹ and took substantial time in deciding for entire project. Even in implementing it, it moves ahead with only two animals,⁷⁰ and they are under observation in a very prominent park where best possible care can be given.⁷¹ The upcoming generation will be raised in government-owned protected area.⁷² Thus, Ridus is taking proportional measures to ensure that required degree of *due diligence* is taken, as the Earth is facing mass extinctions due to human activity,⁷³ de-

⁵⁹ Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J.187, ¶¶ 1 (July 23) [hereinafter Climate Change].

⁶⁰ *Id.*; Owen McIntyre & Thomas Mosedale, The Precautionary Principle as a norm of Customary International Law, 9 J. Env't L. 221, 241 (1997).

⁶¹ Climate Change, *supra* note 59, ¶¶ 131-132.

⁶² Pulp Mills on the River Uruguay (Arg. v. Uru.), 2010 I.C.J. 14, ¶¶ 101, 197 (Apr.20) [hereinafter Pulp Mills]; PATRICIA BIRNIE ET AL., INTERNATIONAL LAW & ENVIRONMENT 153 (3d ed. Oxford Univ. Press 2009).

⁶³ CBD, *supra* note 1, pmbl. ¶ 8-9, art. 3, 8(g), 8(h).

⁶⁴ IUCN, Guidelines for Applying the Precautionary Principle to Biodiversity Conservation and Natural Resource Management 1 (2004).

⁶⁵ BIRNIE ET AL., *supra* note 62, at 139.

⁶⁶ Gabčíkovo-Nagymaros Project (Hung/Slovk.), Judgement, I.C.J. Reports 1997 ¶ 85.

⁶⁷ Rio Declaration, *supra* note 57, Principle 15.

⁶⁸ Bergen Ministerial Declaration on Sustainable Development in the ECE Region, ¶ 58, U.N. Doc. A/CONF.151/PC/10 (May 16, 1990).

⁶⁹ Record, ¶ 15.

⁷⁰ *Id.* ¶ 32.

⁷¹ *Id.* ¶ 33.

⁷² *Id.* ¶ 36.

⁷³ Frankenstein's Mammoth, *supra* note 49, at 585.

extinction should not be denied, owing to the assumption or even if there exists any scientific uncertainty, that it may not restore the lost ecosystem.

[III.A.ii] *Ridus* upholds the duty to cooperate and good neighbourliness principle

21. The duty to cooperate for environmental protection,⁷⁴ a CIL,⁷⁵ is envisaged in CBD,⁷⁶ includes an obligation to consult, share information, and assess risks for environmental protection,⁷⁷ particularly in cases of shared resources.⁷⁸ The mandate to cooperate does not require parties to reach an agreement rather requires parties to put good faith efforts reasonably to reach coordinated agreement.⁷⁹
22. The scope for discretionary action arising from principle of sovereignty is qualified, *inter alia*, under principle of “good neighbourliness” or “*sic utere tuo ut alienum non laedas*”,⁸⁰ which requires states to consider interests and welfare of international community.
23. *Ridus* announced, conducting de-extinction of Panther for rewilding.⁸¹ It has conducted EIA before commencement of project.⁸² Further, entered into negotiations with Anecoyon, requested for PIC in good faith,⁸³ and returned the fossil before completion of 20 years loan period as Anecoyon demanded the return of fossil.⁸⁴ Therefore, *Ridus* duly fulfilled its duty of cooperation and good neighbourliness.

⁷⁴ Rio Declaration, *supra* note 57, Principle 19; Charter of the United Nations art.1, June 26, 1945, 59 Stat. 1031, T.S. No. 993.

⁷⁵ Climate Change, *supra* note 59, ¶¶ 131-132.

⁷⁶ CBD, *supra* note 1, pmbl ¶14, art. 5.

⁷⁷ MOX Plant (Ire. V. U.K), Case No. 10, Provisional Measures, Order of Dec. 3, 2001, 10 ITLOS Rep. 86, ¶ 82; S. Bluefin Tuna (N.Z. v. Japan; Austl. v. Japan), Case Nos. 3 & 4, Provisional Measures, Order of Aug. 27, 1999, 8 ITLOS Rep. 280, ¶ 78 & operative ¶ (e).

⁷⁸ Pulp Mills, *supra* note 62, ¶ 81; Dispute over the Status and use of the Waters of the Silala (Chile v. Bol.), 2022 I.C.J. Reports ¶ 101 (Dec. 1).

⁷⁹ Shrimp, *supra* note 23, ¶¶ 68, 72, 73.

⁸⁰ Corfu Channel (U.K v. Alb.), Judgement, Merits, 1949 I.C.J. Rep. 4, 22 (Apr. 9).

⁸¹ Record, ¶ 16.

⁸² Clarification, 1.

⁸³ Record, ¶ 23.

⁸⁴ *Id.* ¶¶ 24,27.

[II.B] RIDUS DULY CONDUCTED ENVIRONMENTAL IMPACT ASSESSMENT BEFORE THE COMMENCEMENT OF THE PROJECT

24. An Environmental Impact Assessment (EIA), a CIL,⁸⁵ derived from *inter alia* the preventive principle,⁸⁶ is required to be conducted by a competent national authority,⁸⁷ before commencement of project,⁸⁸ if project is likely to cause significant harm to environment.⁸⁹ It is incumbent on state to determine specific requirements of EIA before authorising any project,⁹⁰ based on likely effect of project on environment and should exercise *due diligence* while making EIA.⁹¹ Such assessment is required under CBD.⁹²
25. Ridus conducted EIA both in domestic and environmental perspective before commencement of project, and the assessment showed an overall positive impact.⁹³ Therefore, Ridus complied with its duty to conduct EIA.

III. DSI USED FOR DE-EXTINCTION ACTIVITIES IS NOT A “BIOTECHNOLOGY” FOR PURPOSES OF CBD AND NAGOYA PROTOCOL

26. DSI is an abstraction that is representative and informative about physical material, the genetic resource, but it is not resource itself.⁹⁴ DSI falls outside the scope of ‘biotechnology’ because:

⁸⁵ Sherzod Shadikhodjaev, Environmental Impact Assessments and Trade Agreements: An Analysis of US, Canadian, and EU Practices, 14 TRANSNAT'L ENVTL. L.392 (2025).

⁸⁶ *Id.*

⁸⁷ Rio Declaration, *supra* note 57, Principle 17; Goals and Principles of Environmental Impact Assessment, Principle 1, U.N. Doc. UNEP/GC.14/Inf.17, ¶ 1 (June 11, 1987) [hereinafter UNEP].

⁸⁸ *Id.* Principle 1; Pulp Mills, *supra* note 62, ¶ 205.

⁸⁹ Rio Declaration, *supra* note 57; UNEP, *supra* note 87, Goal 1, Principle 1; *Id.*

⁹⁰ UNEP, *supra* note 87, Goal 2; *Id.*

⁹¹ *Id.*

⁹² CBD, *supra* note 1, art. 14.

⁹³ Clarification, 1.

⁹⁴ CIPA, *Submission to the Ad Hoc Technical Expert Group on Digital Sequence Information on Genetic Resources under the Convention on Biological Diversity*, p. 61, U.N. Doc.

[III.A] ORDINARY MEANING AND DEFINITIONAL SCOPE OF “BIOTECHNOLOGY” UNDER CBD AND NAGOYA PROTOCOL DOES NOT INCLUDE DSI

27. The general rule of treaty interpretation requires that treaty be interpreted in good faith⁹⁵ in accordance with its ordinary meaning.⁹⁶ Interpretation must begin with text itself, which represents expression of party’s intent.⁹⁷ Starting point of every interpretation is elucidation of meaning of text, rather than of any external will of parties.⁹⁸ ICJ underlines in its jurisprudence, that interpretation must be solely based upon text of treaty.⁹⁹
28. “Biotechnology” means “*any technological application that uses biological systems, living organism, or derivatives thereof, to make or modify products or process for specific use.*”¹⁰⁰ Derivatives are result of an organism’s metabolism (Physical natural compound).¹⁰¹ The definition of “genetic resource” is “genetic material of actual or potential value”,¹⁰² with “genetic material” being defined as any material of plant, animal, microbial or other origin containing functional units of heredity.¹⁰³ This substantiates that derivative, genetic resource and genetic material are tangible materials.¹⁰⁴

CBD/DSI/AHTEG/2020/1/INF/1 (Feb. 4, 2020) [hereinafter CBD/DSI/AHTEG/2020/1/INF/1].

⁹⁵ Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgement, I.C.J. Reports 1994, ¶ 41 [hereinafter Libyan].

⁹⁶ Kasikili/Sedudu Island (Botswana/Namibia), Judgement, I.C.J. Reports 1999, ¶ 18.

⁹⁷ DÖRR, *supra* note 7, at 579-580.

⁹⁸ Draft Articles on the Law of Treaties with Commentaries, 1966 Y.B. Int’l L. Comm’n. 2, 220, ¶ 11, U.N. Doc. A/CN.4/SER.A/1966/Add.1.

⁹⁹ Libyan, *supra* note 95; Legality of the use of Force (Serb. and Mont. v. Belg.), Preliminary Objections, I.C.J. Reports 2004, ¶ 100.

¹⁰⁰ CBD, *supra* note 1, art. 2(3).

¹⁰¹ Fran Humphries, Technology Transfer of Aquatic Genetic Resource under the Convention on Biological Diversity and the Nagoya Protocol: ‘Sponging’ off Patent Law Defences, 39 U.N.S.W.L.J. 250 (Apr. 2016).

¹⁰² CBD, *supra* note 1, art. 2.

¹⁰³ Australia, *supra* note 94, at 7.

¹⁰⁴ *Id.*

29. DSI is intangible digital information derived from genetic material;¹⁰⁵ it is not “material containing functional units of heredity”¹⁰⁶ and does not arise from biological system producing naturally occurring compounds.¹⁰⁷ It therefore lacks material and biological attributes required for “genetic material,” “genetic resources,” or their “derivatives,” which CBD has consistently interpreted as tangible biological substances.¹⁰⁸ Extending CBD or Nagoya Protocol to DSI would disregard ordinary meaning of treaty text and impose obligations beyond what States expressly consented to regulate.¹⁰⁹ Hence, DSI, cannot fall within the scope of CBD and Nagoya Protocol.

[III.B] TREATY INTERPRETATION CANNOT EXTEND THE SCOPE OF “BIOTECHNOLOGY” TO INCLUDE DSI WITHOUT THE CONSENT OF PARTIES

30. International legal obligations rest on State consent, as treaties express sovereign will of States¹¹⁰ to bind themselves unless obligations arise *en consensus*¹¹¹ or from CIL.¹¹² Because consent is cornerstone of treaty law, interpretation cannot override it. A treaty must be interpreted in good faith according to ordinary meaning of its terms, in context and in light of its object and purpose,¹¹³ while context includes subsequent practice and later

¹⁰⁵ ICF Consulting Services Ltd. et al., Digital Sequence Information: An Evidence Review, Final Report 13 (Dep’t for Env’t, Food & Rural Affs. [Defra], Aug. 14, 2020).

¹⁰⁶ Convention on Biological Diversity, *Report of the Ad Hoc Technical Resources*, U.N. Doc. CBD/SBSTTA/22/INF/4 & CBD/DSI/AHTEG/2018/1/4*, at 7 (Feb. 20, 2018).

¹⁰⁷ UK Bioindustry Association, *supra* note 94.

¹⁰⁸ ICC, *supra* note 94.

¹⁰⁹ CIPA, *supra* note 94.

¹¹⁰ Cornelius van Bynkershoek, *Quaestiones Juris Publici* (Questions of Public Law), 23 LEIDEN J. INT’L L. 269 (2010).

¹¹¹ *Id.* 316.

¹¹² Jordan J. Paust, *Customary International Law: Its Nature, Sources and Status as Law of the United States*, 12 MICH. J. INT’L L. 59, 59-67 (1990).

¹¹³ VCLT, *supra* note 7, art. 31; Appellate Body Report, *Argentina: Safeguard Measures on Imports of Footwear*, ¶ 91, WTO Doc. WT/DS121/AB/R (adopted Jan. 12, 2000); Appellate Body Report, *United States: Definitive Safeguard Measures on Imports of Circular Welded Carbon Quality Line Pipe from Korea*, ¶ 251, WTO Doc. WT/DS202/AB/R adopted Mar. 8, 2002).

agreements, the object and purpose may only clarify text,¹¹⁴ and not create new meanings that contradict States' express consent.¹¹⁵

31. The ordinary meaning of “biotechnology” under CBD and Nagoya Protocol does not encompass DSI.¹¹⁶ Even when interpreted in light of treaties' object and purpose, DSI cannot fall within scope of “biotechnology”. The terms “genetic material”, “genetic resource”, and “derivative”, denote tangible biological substances containing functional units of heredity, not intangible digital information.¹¹⁷ Preparatory work¹¹⁸ and subsequent COP decisions¹¹⁹ reaffirm that DSI lies outside this scope. Expanding treaties' meaning to include DSI would amount to rewriting them, thereby imposing new obligations without States' consent, contrary to a fundamental principle of international law.

[III.C] COP PRACTICE RELATED TO DSI IS NOT SETTLED UNDER CBD & NAGOYA PROTOCOL

32. To constitute CIL, State practice must be both *general* and *consistent*.¹²⁰ It must be sufficiently widespread and representative.¹²¹ ICJ has repeatedly held it to be “extensive and virtually uniform,”¹²² reflecting settled pattern¹²³ of conduct rather than isolated or divergent acts. Consistency further demands that State behaviour reveal clear and coherent

¹¹⁴ Shrimp, *supra* note 23, ¶ 114.

¹¹⁵ Federal Reserve Bank of New York v. Bank of Markazi, Case No. A28, 36 Iran-U.S. C.T.R. 5 (2000) ¶ 58.

¹¹⁶ CBD, *supra* note 1, art. 2(3); 4 Nagoya Protocol, *supra* note 9, art. 2(d).

¹¹⁷ Japan Bioindustry Association *supra* note 94, p. 74-75; Charles Lawson, Fran Humphries et al., Challenging the existing order of knowledge sharing governance with digital sequence information on genetic resources 19 J. INTELL. PROP. L. & PRAC. 337, 338 (2024).

¹¹⁸ History of the Convention, Convention on Biological Diversity, U.N. CBD, (last visited Sept. 12, 2025), <https://www.cbd.int/history>.

¹¹⁹ CBD/SBSTTA/22/INF/4, *supra* note 106, (Feb. 20, 2018).

¹²⁰ ILC, Draft conclusion on identification of customary international law, with commentaries, U.N. Doc. A/73/10, p. 135-136 (2018).

¹²¹ MICHAEL WOOD & OMRI SENDER, IDENTIFICATION OF CUSTOMARY INTERNATIONAL LAW 139-54 (Oxford Univ. Press 2024); G.A. Res. 73/203, annex, Conclusion 8, U.N. Doc. A/RES/73/203 (Jan. 11, 2019).

¹²² North Sea, *supra* note 18, ¶ 74

¹²³ *Id.* ¶ 77.

pattern; where conduct is contradictory or too varied to demonstrate such uniformity, no general practice can properly be said to exist.¹²⁴

- 33.** Not only must acts concerned amount to a settled practice, but they must reflect an evidence of a belief that practice is rendered obligatory by existence of rule of law (*opinio juris*).¹²⁵ The need for such a belief, i.e., existence of a subjective element, is implicit in the very notion of *opinio juris sive necessitatis*.¹²⁶
- 34.** State and COP practice on DSI remains fragmented and inconsistent, demonstrating no settled interpretation or uniform rule.¹²⁷ COP has acknowledged ongoing ambiguity regarding DSI's scope and terminology,¹²⁸ while most parties have either avoided regulating it or adopted divergent positions. Several States, including EU,¹²⁹ explicitly maintain that DSI does not fall within CBD or Nagoya Protocol.¹³⁰ Such divergences fall far short of “extensive and virtually uniform” practice required under international law, preventing any crystallisation of CIL.¹³¹ Accordingly, DSI cannot be presumed to fall within scope of biotechnology obligations.

¹²⁴ Fisheries case, Judgement of 18 December, 1951, I.C.J. Reports 1951, p. 116, 131-132.

¹²⁵ Jurisdictional Immunities of the State (Ger. v. It: Greece intervening), Judgement, I.C.J. Reports 2012, ¶ 55; Case concerning Right of Passage over Indian Territory (Merits), Judgement, I.C.J. Reports 1960, pp. 40-43.

¹²⁶ North Sea, *supra* note 18; Military and paramilitary Activities in and against Nicaragua (Nicara. v. USA), Merits, Judgement, I.C.J. Reports 1986, ¶ 183.

¹²⁷ *Conference of the Parties to the Convention on Biological Diversity, Decision XV/9, Digital Sequence Information on Genetic Resources*, U.N. Doc. CBD/COP/DEC/15/9 (Dec. 19, 2022).

¹²⁸ CBD/DSI/AHTEG/2018/1/4, *supra* note 106, at 5; *Conference of the Parties to the Convention on Biological Diversity, Digital Sequence Information on Genetic Resources*, Decision 14/20, U.N. Doc. CBD/COP/DEC/14/20, ¶ 9(a), at 2 (30 Nov. 2018) [hereinafter 14/20].

¹²⁹ Submission by the EU and its Member States to CBD Notification 2019-012, p. 2, 29 April 2019.

¹³⁰ *Fact-Finding Study on How Domestic Measures Address Benefit-Sharing Arising from Commercial and Non-Commercial Use of DSI on Genetic Resources* U.N. Doc. CBD/DSI/AHTEG/2020/1/5 (Jan. 29, 2020).

¹³¹ Laird, S., and Wynberg, R. *Fact Finding and Scoping Study on Digital Sequence Information in the Context of the Convention on Biological Diversity and Nagoya Protocol*, UN Doc. CBD/DSI/AHTEG/2018/1/3 (Jan. 10, 2018).

IV. SIDNEY ANIMAL PARK (PARK) IS NOT A USER OF DSI ON GENETIC RESOURCES FOR PURPOSES OF CBD DECISION 16/2, AND SIDNEY ANIMAL PARK IS NOT ENGAGED IN COMMERCIAL ACTIVITY COVERED BY A SECTOR CURRENTLY LISTED IN CBD DECISION 16/2.

[IV.A] PARK IS NOT A USER OF DSI

[IV.A.1] Creator of DSI cannot be termed as user of DSI

35. Decision 16/2 limits benefit-sharing obligations to users of DSI who derive commercial benefit from its use.¹³² The obligation arises from utilisation for profit, not from mere creation.¹³³ The only obligation of creator is to promote open scientific exchange,¹³⁴ a contribution that itself fulfils principle of equitable benefit-sharing.¹³⁵
36. The CBD promotes exchange of information, with DSI forming an essential part of this framework.¹³⁶ Ensuring free and open access to DSI¹³⁷ is crucial to achieving objectives of CBD and Nagoya Protocol while advancing Sustainable Development Goals.¹³⁸ In line with *Aichi Target 19*,¹³⁹ which urges sharing and application of biodiversity-related knowledge, open access to DSI reflects global commitment for promoting equitable participation in research, and generating substantial benefits across commercial and non-commercial

¹³² *Conference of the Parties to the Convention on Biological Diversity, Decision 16/2: Digital Sequence Information on Genetic Resources*, U.N. Doc. CBD/COP/DEC/16/2 (Nov. 1, 2024) [hereinafter 16/2].

¹³³ CBD, *supra* note 1, art. 15(7).

¹³⁴ Guide to the Cali Fund for the Fair and Equitable Sharing of Benefits from the Use of Digital Sequence Information on Genetic Resources (3 July 2025), <https://www.cbd.int/califund>.

¹³⁵ Margo A. Bagley, “Just” Sharing: The Virtues of Digital Sequence Information Benefit-Sharing for the Common Good, 63 HARV. INT’L.J.1, 29-30 (2022).

¹³⁶ CBD/DSI/AHTEG/2020/1/INF/1, *supra* note 94, p. 61.

¹³⁷ Briefing on Benefit-Sharing from Use of DSI, (last visited Sept. 13, 2025), www.gbif.org/article/asp3RhYr7clY8Bpdxarr/briefing-on-benefit-sharing-from-use-of-digital-sequence-information-on-genetic-resources-dsi.

¹³⁸ Sipke Joost Hiemstra et al., DSI: Options and impact of regulating access and benefit sharing-stakeholder perspective, (last visited Sept. 24, 2025) <https://edepot.wur.nl/470286>.

¹³⁹ *Conference of the Parties to the Convention on Biological Diversity, Decision X/2, The Strategic Plan for Biodiversity 2011-2020 and the Aichi Biodiversity Targets*, U.N. Doc. CBD/COP/DEC/X/2, Target 19, (Oct. 29, 2010).

domains.¹⁴⁰ As DSI arises from utilisation of genetic resources, it must be recognised as direct result of such use and a vital form of non-monetary benefit-sharing.¹⁴¹

37. Consistent State practice reinforces this position. Several countries, including USA acknowledge open access as legitimate form of benefit-sharing,¹⁴² ensuring transparency and equity in exchange of data. Publicly accessible DSI not only advances global biodiversity research¹⁴³ but also fulfils benefit-sharing obligations without necessitating monetary compensation.¹⁴⁴ Numerous expert bodies worldwide affirm that open access to DSI constitutes most effective and equitable mechanism for achieving benefit-sharing objectives.¹⁴⁵

38. National Museum of Ridus, a state organ,¹⁴⁶ extracted DNA from fossil, developed the reference genome, and generated DSI.¹⁴⁷ Ridus abiding by “*Principle of Common but Differentiated Responsibilities*”¹⁴⁸ and “*good neighbourliness*”¹⁴⁹ ensured global open access to DSI, thereby providing non-monetary benefit sharing.¹⁵⁰ By doing so, Ridus has fulfilled its legal obligation of sharing benefits under CBD and Nagoya Protocol in *good*

¹⁴⁰ ICC, CBD/DSI/AHTEG/2020/1/INF/1, *supra* note 94, p. 69.

¹⁴¹ 14/20, *supra* note 128, ¶¶ 9-10; Just sharing, *supra* note 135, p. 29-30.

¹⁴² CBD/DSI/AHTEG/2020/1/5, *supra* note 130. p. 27; P.B. Giles, How to Claim a Gene: Application of the Patent Disclosure Requirements to Genetic Sequences, 27 GA. ST. UL REV. 695 (2010).

¹⁴³ The European Association for Bioindustries, CBD/DSI/AHTEG/2020/1/INF/1, *supra* note 94, at 65.

¹⁴⁴ CBD/DSI/AHTEG/2020/1/5, *supra* note 130, p. 25.

¹⁴⁵ CBD/DSI/AHTEG/2020/1/INF/1, *supra* note 94, at 69.

¹⁴⁶ ARISWA, art. 4, in Report of the International Law Commission on the Work of Its Fifty-Third Session, U.N. GAOR, 56th Sess., Supp. No. 10, p. 43, U.N. Doc. A/56/10 (2001).

¹⁴⁷ Record, ¶ 16.

¹⁴⁸ United Nations Framework Convention on Climate Change Art. 3 ¶ 1, May 9, 1992, 1771 U.N.T.S. 107; Kyoto Protocol to the United Nations Framework Convention on Climate Change Art. 10, Dec. 11, 1997, 2303 U.N.T.S. 162.

¹⁴⁹ Mihaela Pop, Some Considerations Regarding Good Neighbourliness in International Law, 23 J. L. & Admin. Sci. 146, 146-149 (2025); Max Valverde Soto, General Principles of International Environmental Law, 3 ILSA J. INT’L & COMP. L. 193, 197 (1992).

¹⁵⁰ Record, ¶ 28.

faith.¹⁵¹ Moreover, park is merely providing care and habitat to Panthers under direction and control of Ridus.¹⁵² Therefore, park cannot be termed as user of DSI as it performs custodial and conservation role and therefore, no question arises of benefit sharing by park, and even if there was any benefit sharing obligation, the adequate benefit has been shared by making DSI publicly accessible.

[IV.A.2] Park does not qualify the required threshold of “User”

39. Although CBD and Nagoya Protocol do not expressly define term “user,” this omission reinforces that its interpretation cannot be open-ended. The meaning must instead be derived from term “utilization of genetic resources,”¹⁵³ which encompasses R&D on their genetic or biochemical composition of Genetic resource including through biotechnology.¹⁵⁴ Interpreted in ordinary sense, R&D necessarily involves using genetic resources to generate scientific knowledge or develop commercial applications.¹⁵⁵ Thus, only those actively employing genetic resources for such purposes fall within scope of “users.”

40. The DSI was generated by National Museum of Ridus¹⁵⁶ and subsequently utilised by Salols Co. in R&D that led to reintroduction of panthers.¹⁵⁷ In contrast, park performs a

¹⁵¹ Nuclear Tests (Aus. v. Fr.), Judgement, I.C.J. Reports 1974, ¶ 46; Border and Transborder Armed Actions (Nicar. v. Hond.), Jurisdiction and Admissibility, Judgement, I.C.J. Reports 1988, ¶ 94.

¹⁵² Record, ¶ 40.

¹⁵³ Regulation (EU) No 511/2014 of the European Parliament and of the Council of 16 April 2014 on Compliance Measures for Users from the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from Their Utilization in the Union, 2014 O.J. (L 150) 59 (EU).

¹⁵⁴ THOMAS GREIBER ET AL., AN EXPLANATORY GUIDE TO THE NAGOYA PROTOCOL ON ACCESS AND BENEFIT-SHARING 67 (IUCN Env'tl. Policy & L. Paper No. 83, 2012).

¹⁵⁵ Gurdial S. Nijar, The Nagoya Protocol on Access and Benefit Sharing of Genetic Resources: Analysis and Implementation Options for Developing Countries, South Centre Research Paper No. 36 (Mar. 2011).

¹⁵⁶ Record, ¶ 16.

¹⁵⁷ *Id.* ¶ 31.

purely conservationist function, limited to providing habitat and care.¹⁵⁸ Mere possession or observation of species does not amount to “utilisation of genetic resources” within CBD or Nagoya Protocol. Accordingly, park cannot be characterized as a “user” of DSI.

[IV.A.3] Park’s activities fall under zoological and nature reserve activities, not within sectors benefiting from DSI use

- 41.** Under International Standard Industrial Classification of All Economic Activities (“ISIC”) entry 91 encompasses activities relating to libraries, archives, museums of all kinds, botanical and zoological gardens, and operation of historical sites and nature reserves.¹⁵⁹ Entry 9103 further classifies “botanical and zoological gardens and nature reserve activities,” which include operation of activities related to wildlife preservation and environmental conservation.¹⁶⁰
- 42.** The activities of park fall outside the list of sectors that may benefit directly or indirectly from use of DSI.¹⁶¹ Instead, they fall within “*botanical and zoological gardens and nature reserve activities*” under ISIC entry 9103, which pertains to wildlife preservation and conservation.¹⁶² Park operates as non-profit corporation and is accredited by WAZA underscoring its non-commercial and conservationist character. Accordingly, park cannot be regarded as “user” of DSI.

¹⁵⁸ *Id.* ¶ 40.

¹⁵⁹ United Nations, Department of Economic and Social Affairs, Statistics Division, International Standard Industrial Classification of All Economic Activities (ISIC), Rev. 4 (Statistical Papers, Series M, No. 4/Rev.4, 2008), p. 258.

¹⁶⁰ *Id.* at 259.

¹⁶¹ 16/2, *supra* note 132, P. 6.

¹⁶² Record, ¶¶ 40, 33.

[IV.B] PARK IS NOT ENGAGED IN COMMERCIAL ACTIVITY COVERED BY THE SECTORS CURRENTLY LISTED IN CBD DECISION 16/2

43. Park is not engaged in commercial activity covered by sectors currently listed in its decision 16/2 because:

[IV.B.1] The activities of the park do not qualify as commercial activity

44. An activity can generally be described as “commercial” if its purpose is to obtain economic benefit, including profit, and directed towards resale, exchange, provision of a service,¹⁶³ investment, commercial promotion and other activities for profit purposes.¹⁶⁴ Park is merely providing habitat and care to panthers,¹⁶⁵ and revenue generated by panther’s viewing charge is solely used for care of two panthers, and any excess funds will be used in park’s captive breeding program.¹⁶⁶ Additionally, park is operated by non-profit corporation and is accredited by WAZA,¹⁶⁷ highlighting its conservation mandate. Therefore, activities of park cannot be termed as commercial activity.

[IV.B.2] Park does not derive any benefit from the use of DSI

45. Under Decision 16/2, only users of DSI on genetic resources who benefit from its use in their commercial activities must contribute a proportion of their profits or revenue to the global multilateral fund,¹⁶⁸ according to their size.¹⁶⁹ Benefit-sharing obligations arise only

¹⁶³ Convention on International Trade in Endangered Species of Wild Fauna and Flora (“CITES”), Resolution Conf. 5.10 (Rev. CoP19), at 1 (1985, rev. 2022).

¹⁶⁴ Socialist Republic of Vietnam, Commercial Law, No. 36/2005/QH11, adopted June 14, 2005, effective Jan. 1, 2006.

¹⁶⁵ Record, ¶ 40.

¹⁶⁶ *Id.* ¶ 35.

¹⁶⁷ *Id.* ¶ 33.

¹⁶⁸ Cali Fund, *supra* note 134.

¹⁶⁹ Ad Hoc Open-ended Working Group on *Benefit-sharing from the Use of Digital Sequence Information on Genetic Resources, Recommendation 2/1*, CBD/WGDSI/REC/2/1 (Aug. 16, 2024).

when benefits are derived from commercial or other utilisation of genetic resources.¹⁷⁰ The decision identifies sectors that benefit from DSI utilisation; including animal and plant breeding, and biotechnology etc,¹⁷¹ all of which involve commercial R&D on genetic or biochemical composition.

46. The park's primary objective is conservation, providing habitat and care for Panthers.¹⁷² While, financial threshold has been met; and accepted by Ridus in spirit of cooperation,¹⁷³ but an amount attributable to Panthers is only USD 4 million, mere 3.08% of park's total revenue i.e., USD 130 million,¹⁷⁴ an amount insufficient to establish commercial intent and revenue generated from Panther viewing fee is solely used for conservation of panthers.¹⁷⁵ Consequently, Park has not derived commercial benefit and therefore its activity cannot be termed as commercial activity.
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¹⁷⁰ CBD, *supra* note 1, art. 15(7).

¹⁷¹ 16/2, *supra* note 132.

¹⁷² Record, ¶¶ 33, 40.

¹⁷³ *Id.* ¶ 45.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* ¶ 35.

CONCLUSION

Respondent, Ridus, respectfully requests the court to adjudge and declare that:

1. Ridus's conduct complied with the prior informed consent provisions of the CBD and the Nagoya Protocol, to the extent they are applicable.
2. Anecoyon's refusal to consent based on its objections to de-extinction is counter to the CBD's objectives.
3. DSI used for de-extinction activities is not "biotechnology" for purposes of the CBD and the Nagoya Protocol.
4. Sidney Animal Park is not a user of DSI on genetic resources, and Sidney Animal Park is not engaged in commercial activity covered by a sector currently listed in CBD decision 16/2.

RESPECTFULLY SUBMITTED

AGENTS OF RESPONDENT